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UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,

Petitioner,

v.

COINBASE, INC.,

Respondent.

Case No. 3:17-cv-01431-JSC

**UNITED STATES' OPPOSITION TO
JOHN DOE 1, 2, AND 3'S MOTIONS
TO INTERVENE**

DATE: June 29, 2017
TIME: 9:00 a.m.
LOCATION: Courtroom F, 15th Floor
450 Golden Gate Avenue

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1 The United States of America submits this Opposition to the Motions to Intervene filed by John
2 Doe 1 and John Doe 2 (Docket No. 10) and John Doe 3 (Docket No. 19).¹

3 I. INTRODUCTION

4 The IRS is conducting an investigation to determine the identity and correct federal income tax
5 liabilities of United States persons who conducted transactions in convertible virtual currency during
6 2013-2015. In order to determine the identity of such U.S persons, who have transacted in a medium of
7 exchange that touts as one of its primary benefits the anonymity of the users, the IRS sought and
8 received permission from the Court to serve a summons on Coinbase, which operates a bitcoin wallet
9 and exchange business.

10 After discussions with Coinbase failed to result in Coinbase's production of the books, records,
11 papers, and other data demanded in the summons, the United States brings this action seeking an order
12 enforcing the summons and requiring Coinbase to comply. Despite any legal basis to do so, John Does
13 1, 2 and 3 now seek the right to intervene in this action and assert their own claim to quash the
14 summons, for a protective order, or for an evidentiary hearing and limited discovery. Because the IRS
15 has the Congressional mandate to make inquiries into the tax liability of every person who may be liable
16 to pay an internal revenue tax, and such mandate is not limited to instances where there is an indicia of
17 tax avoidance, John Does 1, 2 and 3 do not have a significant protectable interest mandating their
18 intervention in this action of right. Additionally, the Does cannot show that they will be impaired by a
19 disposition of this action because the law is clear that taxpayers have no legal protection to shield their
20 identities or account information from the IRS.

21 Further, the Does are not entitled to permissively intervene in this action because the United
22 States has not waived its sovereign immunity for claims brought by a John Doe seeking to quash a
23 summons and thus they cannot establish an independent ground for jurisdiction. Even if John Does 1, 2
24

25 ¹ Per the Stipulation and Order entered by the Court (Docket No. 22), this opposition is limited to
26 the arguments made by John Does 1, 2 and 3 in support of their procedural request to intervene in this
27 summons enforcement proceeding. The United States will respond to the substantive arguments
28 challenging the summons as advanced by the Does, as necessary and as delineated by the Stipulated
Order. The United States does not waive any objections or surrender its opposition to the Does'
Motions to Quash Summons, or for Protective Order, or for an Order Scheduling an Evidentiary Hearing
and Permitting Limited Discovery by not responding here.

1 and 3 could establish an independent ground for jurisdiction, they still would not be entitled to
 2 permissively intervene in this action. They cannot establish that they have Article III standing to pursue
 3 their cause of action against the government and their intervention would necessarily unduly delay and
 4 prejudice the adjudication of the parties' rights due to the sweeping relief they seek.

5 Because John Does 1, 2 and 3 cannot meet their burden to establish that they are entitled to
 6 intervention of right, or even be allowed to permissively intervene, the Court should deny their motions.

7 **II. BACKGROUND**

8 Intervention under Rule 24 is not automatic in all summons proceedings because Congress has
 9 created a comprehensive scheme governing the issuance and enforcement of IRS summonses. That
 10 scheme, in particular as it applies to John Doe summonses as discussed below, precludes the
 11 intervention of John Does 1, 2 and 3 in this enforcement proceeding.

12 The United States has a system of taxation that relies on the good faith and integrity of each
 13 taxpayer to disclose completely and honestly all information relevant to his or her tax liability. *See*
 14 *United States v. Clarke*, ___ U.S. ___, 134 S.Ct. 2361, 2365 (2014); *United States v. Arthur Young &*
 15 *Co.*, 465 U.S. 805, 815-16 (1984). “Nonetheless, it would be naive to ignore the reality that some
 16 persons attempt to outwit the system.” *United States v. Bisceglia*, 420 U.S. 141, 145 (1975).
 17 Accordingly, Congress has conferred upon the IRS the duty to make inquiries, determinations, and
 18 assessments of all taxes, and has correspondingly given it expansive information gathering authority,
 19 including the power to compel disclosure, for that purpose. I.R.C. §§ 6201(a), 7601(a), 7602; *see Arthur*
 20 *Young & Co.*, 465 U.S. at 816.

21 The summons power granted to the IRS under Section 7602 is the centerpiece of that authority.
 22 That power is broad, and is designed to enable the IRS to conduct effective tax investigations. *See*
 23 *Arthur Young & Co.*, 465 U.S. at 816. That statute authorizes the IRS to examine records, issue
 24 summonses, and take testimony for the purpose of “ascertaining the correctness of any return,” “making
 25 a return where none has been made,” “determining the liability of any person for any internal revenue
 26 tax,” or “inquiring into any offense connected with the administration or enforcement of the internal
 27 revenue laws.” I.R.C. § 7602(a), (b); *see United States v. Euge*, 444 U.S. 707, 710-11 (1980).

1 An IRS summons is not self-enforcing, however. *See Clarke*, 134 S.Ct. at 2367; *Donaldson v.*
 2 *United States*, 400 U.S. 517, 524 (1971); *United States v. Gilleran*, 992 F.2d 232, 233 (9th Cir. 1993). If
 3 a party refuses to comply with a summons, the Government may enforce the summons only after filing a
 4 petition in a district court and obtaining an order compelling the production of the requested materials or
 5 testimony. *See* I.R.C. §§ 7402(b), 7604; *Clarke*, 134 S.Ct. at 2367; *Gilleran*, 992 F.2d at 233. This
 6 judicial involvement provides the appropriate check on the executive branch in its exercise of the
 7 summons power and serves to safeguard the taxpayer’s procedural rights. *See Reisman v. Caplin*, 375
 8 U.S. 440, 449 50 (1964); *Bisceglia*, 420 U.S. at 146.

9 Congress has specified certain additional procedures that the IRS must follow in issuing a
 10 summons directed to a third party concerning the tax liability of another person. Generally, if the IRS
 11 serves a summons on a third party that requests the production of records pertaining to the tax liability of
 12 an identified person other than the third party itself, then that other person must be served with timely
 13 notice of the summons. I.R.C. § 7609(a)(1). That “noticee” acquires certain procedural rights,
 14 including the right to file a petition in the district court to quash the summons, *see* I.R.C. §
 15 7609(b)(2)(A), and – if the Government brings an enforcement action under Section 7604 against the
 16 summoned party – the right to intervene in that proceeding, *see* I.R.C. § 7609(b)(1). The notice
 17 requirement and noticee procedural rights do not apply in all circumstances, however. For example,
 18 notice is not required to be given, and thus no noticee procedural rights to quash are authorized, if the
 19 summons was issued in aid of collection of a tax liability or issued by an IRS criminal investigator in
 20 connection with a criminal investigation (I.R.C. § 7609(c)(2)), or if the summons is a “John Doe”
 21 summons (I.R.C. § 7609(c)(3)).

22 The investigative power of the IRS also includes the power to issue “John Doe” summonses, that
 23 is, summonses that do not identify the person or persons with respect to whose tax liabilities information
 24 is sought. *See Bisceglia*, 420 U.S. at 148-49. In such a case, “where the IRS does not know the identity
 25 of the taxpayer under investigation, advance notice to that taxpayer is, of course, not possible.” *Tiffany*
 26 *Fine Arts, Inc. v. United States*, 469 U.S. 310, 316-17 (1985) (emphasis in original). As a substitute for
 27 that notice, the Code requires the IRS first to obtain leave from a district court before it may serve a
 28 “John Doe” summons on a third party. *See* I.R.C. § 7609(f); *Tiffany Fine Arts*, 469 U.S. at 317.

1 In order to obtain such leave, the IRS must demonstrate to the district court that: (1) “the summons
 2 relates to the investigation of a particular person or ascertainable group or class of persons;” (2) “there is
 3 a reasonable basis for believing that such person or group or class of persons may fail or may have failed
 4 to comply with any provision of any internal revenue law;” and (3) the information sought to be
 5 obtained from the summons, and the identity of the person or persons with respect to whose liability the
 6 summons will be issued, are “not readily available from other sources.” I.R.C. § 7609(f). The
 7 proceeding before the district court is *ex parte*, and the district court makes its determination whether the
 8 statutory requirements have been satisfied solely on the basis of the Government’s petition and its
 9 supporting affidavits. I.R.C. § 7609(h)(2); *see Tiffany Fine Arts*, 469 U.S. at 317.

10 The district court’s review of a John Doe summons under Section 7609(f) prior to its issuance
 11 operates as a substitute for the review that would take place if a noticee were to file a motion to quash a
 12 summons under Section 7609(b). “In effect, in the John Doe context, the court takes the place of the
 13 affected taxpayer under §§ 7609(a) and (b) and exerts a restraining influence on the IRS.” *Tiffany Fine*
 14 *Arts*, 469 U.S. at 320. Because the district court acts in this capacity in a Section 7609(f) proceeding,
 15 Congress did not see fit to duplicate that proceeding by extending the right to bring a motion to quash to
 16 a John Doe; instead, the statute authorizes such a motion to be brought only by a person who is
 17 identified in the summons. I.R.C. § 7609(a)(1), (b)(2)(A); *see also* I.R.C. § 7609(c)(3) (excluding John
 18 Doe summonses from petitions to quash). Similarly, Congress extended an automatic right of
 19 intervention in an enforcement proceeding against a summoned party only to a noticee. I.R.C. §
 20 7609(a)(1), (b)(1), (c)(3).

21 In summary, “[t]he mechanism for a taxpayer’s challenge to a summons differs according to the
 22 statutory provision under which the summons is issued.” *United States v. Ritchie*, 15 F.3d 592, 597 (6th
 23 Cir. 1994). The proper procedure for a taxpayer who receives an IRS summons but does not wish to
 24 comply is to wait for the IRS to bring an enforcement proceeding in district court and challenge the
 25 summons in that proceeding. *See Strong v. United States*, 57 F. Supp. 2d 908, 915 (N.D. Ca. June 22,
 26 1999). If the summons is issued to a third party and it concerns an identified taxpayer, that taxpayer
 27 may move to quash the summons, or he may intervene in an enforcement action brought by the IRS
 28 against the third party. *See* I.R.C. § 7609(b)(1), (b)(2)(A); *Ritchie*, 15 F.3d at 597. If the summons is

1 issued to a third party and it concerns an unidentified taxpayer, a district court must first grant the IRS
 2 leave to serve the summons under Section 7609(f). The taxpayer may not intervene in the Section
 3 7609(f) proceeding and may not move to quash the summons after its issuance. *See* I.R.C. § 7609(f),
 4 (h)(2), (c)(3).

5 This Court's review of the John Doe summons to Coinbase prior to its issuance under Section
 6 7609(f) served as a substitute for the review that a named taxpayer could seek through a motion to
 7 quash. *See Tiffany Fine Arts*, 469 U.S. at 320. The statute accordingly precludes any party from
 8 duplicating this review by filing a motion to quash a John Doe summons. *See* I.R.C. § 7609(c)(3);
 9 *Ritchie*, 15 F.3d at 397.

10 Taxpayers do not have a general right, apart from the statutory grant of jurisdiction in Section
 11 7609, to move to quash an IRS summons. *See Reisman*, 375 U.S. at 450. Because John Does 1, 2 and 3
 12 do not fall within the class of taxpayers who are authorized under Section 7609 to file a motion to quash,
 13 they are foreclosed from seeking judicial review of the summons issued to Coinbase. This is as
 14 Congress intended:

15 Congress, however, did not seek to ensure that the IRS have an adversary
 16 in all summons proceedings. All that it did was require that a party with a
 17 real interest in the investigation – or the district court in the John Doe
 18 context – have standing to challenge the IRS's exercise of its summons
 authority. It is not up to us, in construing the scope of this authority, to
 identify a problem that did not trouble Congress, or to attempt to correct it.

19 *Tiffany Fine Arts*, 469 U.S. at 322; *see also United States v. First Family Mtge. Corp.*, 739 F.2d 1275,
 20 1278-79 (7th Cir. 1984) (attempt by taxpayer, outside of waiver of immunity in Section 7609, to restrain
 21 IRS from investigation of tax liability is barred by Anti-Injunction Act).

22 III. ARGUMENT

23 A. John Does 1, 2 and 3 Do Not Have a Right to Intervene in this Enforcement 24 Proceeding.

25 Only under certain circumstances may a taxpayer have a right to intervene in a summons
 26 enforcement action under Fed. R. Civ. P. 24(a). Rule 24(a)(2) provides in pertinent part:

27 (a) Intervention of Right. Upon timely application anyone shall be
 28 permitted to intervene in an action . . . (2) when the applicant claims an
 interest relating to the property or transaction which is the subject of the
 action and the applicant is so situated that the disposition of the action
 may as a practical matter impair or impede the applicant's ability to

1 protect that interest, unless the applicant's interest is adequately
2 represented by existing parties.

3 John Does 1, 2 and 3 must prove that "(1) their application is timely; (2) they have an interest relating to
4 the subject matter of the action; (3) there is a risk that their interest will be impaired by the action's
5 disposition; and (4) their interests are not represented by the Government or [the summoned party]." *United States v. Sidley Austin Brown & Wood LLP*, No. 03 C 9355, 2004 WL 816448, at *3 (N.D. Ill.
6 Apr. 15, 2004) (citation and internal quotations omitted). Moreover, intervention is a matter of right
7 only where a taxpayer has a "significantly protectable interest" in the property that is the subject of the
8 summons enforcement proceeding, that is, a claim of privilege or a claim that it would be an abuse of
9 process if the court were to enforce the summons. *Donaldson*, 400 U.S. at 531. The failure to establish
10 even just one of the four elements requires that the motion to intervene be denied. *Id.*; *Sidley*, 2004 WL
11 816448, at *3.

12 The United States does not dispute that John Does 1, 2 and 3 have timely applied to intervene in
13 this proceeding. However, that is the only required element of intervention that they can establish and
14 so their motions to intervene should be denied.

15 **1. John Does 1, 2 and 3 Do Not Have a Significant Protectable Interest in this**
16 **Proceeding.**

17 John Doe 1 and John Doe 2 allege that their significant protectable interest here is based on an
18 abuse of process claim rooted in the following: 1) that the IRS is not able and does not intend to review
19 the tax returns of the Coinbase customers for which it seeks identities, and 2) that the summons has not
20 been tailored to "indicia of tax-avoidance conduct."² Docket No. 10 at 11:9-13. Neither of these two, or
21 the combination of both, constitutes an abuse of process. An abuse of process in the summons context,
22 as defined by the Supreme Court (and acknowledged by John Does 1, 2 and 3), "would take place if the
23 summons had been issued for an improper purpose, such as to harass the taxpayer or to put pressure on
24 him to settle a collateral dispute, or for any other purpose reflecting on the good faith of the particular
25 investigation." *United States v. Powell*, 379 U.S. 48, 58 (1964).

26
27
28 ² Similarly, John Doe 3 contends that because the summons is not limited to persons engaged in
tax avoidance schemes that it is excessive and therefore an abuse of process. Docket No. 19 at 7:23-27.

1 That the IRS might make inquiries into the tax liability of every person who may be liable to pay
 2 an internal revenue tax, as is its Congressional mandate, is not an abuse of process. Section 7602
 3 authorizes the IRS to examine “any books, papers, records, or other data which *may* be relevant or
 4 material.” (Emphasis added.) In *United States v. Arthur Young & Co.*, 465 U.S. 805, 814 (1984), the
 5 Court stated that the language “may be” reflects Congress’s express intention to allow the IRS to obtain
 6 “items of even *potential* relevance to an ongoing investigation, without reference to its admissibility.”
 7 (Emphasis in original.) The IRS need not show that the “documents it seeks are actually relevant in any
 8 technical, evidentiary sense.” *Arthur Young*, 465 U.S. at 814. In *Powell*, the Supreme Court noted that
 9 the IRS can issue a summons to investigate ““merely on suspicion that the law is being violated, or even
 10 just because it wants assurance that it is not.”” 379 U.S. at 57 (quoting *United States v. Morton Salt*, 338
 11 U.S. 632, 642-43 (1950)). Thus, in applying the *Powell* test, the question is not whether the records
 12 sought, when disclosed, will contradict a taxpayer’s return, but whether the records “might” throw light
 13 upon the correctness of a return. *Arthur Young*, 465 U.S. at 814-15 & n.11. The IRS need not accept
 14 the word of the summoned party that records are not relevant. It is entitled to determine that fact for
 15 itself. See *Tiffany Fine Arts*, 469 U.S. at 323.

16 John Doe 1 and John Doe 2 speculate that the IRS is not able and does not intend to examine the
 17 tax returns of Coinbase users. Docket No. 10 at 11:9-10. This wholly unsupported theory is
 18 contradicted by the evidence in the record. As Senior Revenue Agent Utzke has testified, the IRS is
 19 conducting an investigation to determine the identity and correct federal income tax liabilities of United
 20 States persons who conducted transactions in a virtual currency during 2013-2015. Docket No. 3 at 2:
 21 ¶ 2. Whether the IRS actually examines the tax returns of every single person identified in their
 22 investigation is not relevant to the ultimate inquiry before this Court which is whether the summons: (1)
 23 was issued for a legitimate purpose; (2) seeks information relevant to that purpose; (3) seeks information
 24 that is not already within the IRS’s possession; and (4) satisfies all administrative steps required by the
 25 Internal Revenue Code. *Powell*, 379 U.S. at 57-58. The fulfillment of the IRS’s mandate from
 26 Congress, to make inquiries into the liability of every person who may be liable to pay, to include U.S.
 27 persons who have transacted in a virtual currency, is a legitimate purpose in issuing a summons.
 28 Further, enforcement of a summons, issued for that very legitimate purpose, cannot be an abuse of this

1 Court's process. Indeed, the Does have failed to cite, and the United States is not aware that, any
2 authority exists for their proposition that the IRS is required to use every piece of information that is
3 returned by a summons in order for it to have been considered properly issued and enforceable. The
4 request of John Doe 1 and John Doe 2 that this Court find such a requirement is absurd.

5 Furthermore, the argument of John Does 1, 2 and 3 that the summons should have been tailored
6 to return the identities of only U.S. persons who demonstrate "indicia of tax-avoidance" or have engaged
7 in tax avoidance schemes is not only irrelevant but is also vague. The Does do not explain what they
8 mean by "tax-avoidance" nor do they offer what that these indicia might be. If what the Does are
9 suggesting is that a criminal standard for tax avoidance is used, any such standard need not be satisfied
10 for an IRS examination. Again, the IRS can issue a summons to investigate just because it wants
11 assurance that the law is not being violated. *Powell*, 379 U.S. at 57. To the extent the Does raise their
12 "indicia of tax-avoidance" argument to assert that the IRS has improperly issued a John Doe summons,
13 that matter was already decided when this Court granted the Petition for Leave to Serve "John Doe"
14 Summons, Case No. 3:16-cv-6658-JSC, November 30, 2016, Docket No. 7. The Does cannot use this
15 enforcement proceeding as a mechanism to challenge the factors under I.R.C. § 7609(f) for issuing a
16 "John Doe" summons. *United States v. Samuels, Kramer & Co.*, 712 F.2d 1342, 1346 (9th Cir. 1983)
17 (stating that "the three factual determinations that a district court must make under section 7609(f)
18 before issuing its ex parte authorization of a John Doe summons may not be challenged" in an
19 enforcement proceeding).

20 To the extent the Does' tax-avoidance argument pertains to simply not reporting all income on
21 a tax return, that is part of the reason the IRS has launched this investigation. The IRS is aware that U.S.
22 persons are transacting in virtual currency. As explained in IRS Notice 2014-21, 2014-1 C.B. 938, tax
23 consequences exist as a result of those transactions. And the IRS is aware, based upon the data it
24 possesses that reflects taxpayers' self-reporting, that there seems to be a substantial gap between the
25 number of people transacting in virtual currency (for which tax consequences might attach) and those
26 that are reporting such transactions. Docket No. 3 at 4: ¶ 13. There are many reasons why these U.S.
27 persons are failing to properly report the tax consequences of their virtual currency transactions and one
28 of which may be tax avoidance. It does not make any sense (nor is it possible) for the IRS to limit its

1 investigation into ferreting out only those unknown U.S. persons who have some sort of specific intent.
 2 And, again, the Does have failed to cite, and the United States is not aware of, any authority that
 3 supports their proposition that a summons is only enforceable if the scope is limited to revealing the
 4 identities of U.S. persons who demonstrate indicia of tax-avoidance conduct as the Does might define it.
 5 The request that this Court find such is also absurd.

6 The IRS's investigation into the identities of U.S. persons who may be failing to properly report
 7 their tax liabilities is a legitimate purpose for which the IRS is pursuing the summons at issue here. This
 8 Court's enforcement of such would not constitute an abuse of its process and the baseless speculation of
 9 John Does 1, 2 and 3 about what the IRS may do with the information returned by the summons or how
 10 it may have narrowed its investigation does not amount to a protectable interest sufficient to justify
 11 intervention as a matter of right.

12 **2. John Does 1, 2 and 3 Will Not be Impaired by the Disposition of this Action.**

13 John Does 1, 2 and 3 have articulated that their significant protectable interest in this proceeding
 14 is that it would be an abuse of this Court's process to enforce the IRS summons because the IRS is not
 15 able to examine every Coinbase customer and the summons was not limited to U.S. persons engaged in
 16 tax avoidance. Despite that, they argue that their interests will be impaired by disposition of this action
 17 because their identities and transaction information will become known to the IRS even though they are
 18 not the subject of an IRS investigation, there is no basis for such an investigation, the IRS has not
 19 identified any basis for the disclosure of identification and transaction information, and that the IRS will
 20 use the summoned information to find patterns and make predictions. Docket No. 10 at 11:22-28;
 21 Docket No. 19 at 8:1-20. Setting aside that the protectable interest they have identified does not match
 22 the impairment they claim to be at risk of suffering, it is clear that what John Does 1, 2 and 3 really
 23 object to in this proceeding is their identities becoming known to the IRS. But, case law is clear that
 24 there is no legal protection afforded taxpayers to shield their identities from the IRS. *See Bisceglia*, 420
 25 U.S. at 150-51; *United States v. BDO Seidman*, 337 F.3d 802, 812-13 (7th Cir. 2003); *Ritchie*, 15 F.3d at
 26 601; *United States v. Kersting*, 891 F.2d 1407, 1409 (9th Cir. 1989); *Sidley*, 2004 WL 816448.

27 Moreover, as with bank, credit card, or brokerage accounts, the IRS has the authority to obtain
 28 financial records, including transactional records, when it is examining a tax return. *See Reiserer v.*

1 *United States*, 479 F.3d 1160, 1165 (9th Cir. 2007) (“there is no confidentiality where a third party such
 2 as a bank either receives or generates the documents sought by the IRS”). The result here should be no
 3 different – there is no significant protectable interest being impaired – simply because John Does 1, 2,
 4 and 3 utilized virtual currency. Also, the law does not recognize a desire to not have one’s tax returns
 5 examined as worthy of legal protections. *Donaldson*, 400 U.S. at 530. Further, it is well established that
 6 the IRS need not have probable cause to examine the correctness of returns or the correct liabilities of
 7 any taxpayer. *Powell*, 379 U.S. at 48. Although John Does 1, 2 and 3 may be affected by the
 8 disposition of this case because the IRS may learn their identities, that does not constitute an impairment
 9 of a protectable interest. Accordingly, their motions should be denied.

10 **3. John Does 1, 2 and 3 Do Not Have a Unique Perspective.**

11 John Doe 1 and John Doe 2 argue that neither the government, nor Coinbase, can fully represent
 12 their unique interests in this proceeding.³ However, in so arguing, John Doe 1 and John Doe 2 again
 13 diverge from their previously expressed interest in arguing about an abuse of this Court’s process to
 14 instead admitting that their “primary interest is protecting the privacy of Coinbase’s users’ information.”
 15 Docket No. 10 at 12:15-21. But Coinbase’s users have no expectation of privacy in their account
 16 information that will be damaged by disclosure of that information to the IRS. In *United States v.*
 17 *Miller*, 425 U.S. 435 (1976) the Supreme Court expressly held that there is no “legitimate expectation of
 18 privacy” in information kept in bank records” for Fourth Amendment purposes. *Id.* at 442. The
 19 reasoning behind that holding is straightforward. The Supreme Court held that documents containing
 20 account information are “business records of” banks, not “private papers” of the account holder, who
 21 “voluntarily conveyed” the account information to the bank and bank employees. *Id.* at 441-442.
 22 Moreover, the account holder “takes the risk” that “the information will be conveyed” by the bank “to
 23 the Government.” *Id.* at 443. As a result, there can be no legitimate expectation that the information
 24 will not be disclosed to the government. *See also Smith v. Maryland*, 442 U.S. 735, 743-44 (1979)
 25 (finding “no legitimate expectation of privacy in information” voluntarily turned over “to third parties”).
 26

27
 28 ³ Likewise, but without elaboration, John Doe 3 contends she offers a unique perspective on this
 case “combining principles of computer science, economics, and the law” that no other party can or will
 make. Docket No. 19 at 9:10-14.

1 And the Ninth Circuit has repeatedly recognized, and applied, this holding in *Miller*. See, e.g., *United*
 2 *States v. Golden Valley Elec. Ass'n*, 689 F.3d 1108, 1116 (9th Cir. 2012); *Mangum v. Action Collection*
 3 *Serv., Inc.*, 575 F.3d 935, 942-43 (9th Cir. 2009); *In re Grand Jury Proceedings*, 40 F.3d 959, 962 (9th
 4 Cir. 1994).

5 *Miller* applies here. Coinbase users, including John Does 1, 2 and 3, voluntarily allowed
 6 Coinbase to know the information at issue – including their identities and transaction information – in
 7 the course of opening accounts and conducting transactions using their accounts. Coinbase users
 8 accordingly have no expectation of privacy in the information and no legally protected right to prevent
 9 its transmission to the IRS. John Does 1, 2 and 3 do not have a unique perspective to offer this Court.
 10 Their motions to intervene should therefore be denied.

11 **B. John Does 1, 2 and 3 Should Not be Permitted to Permissively Intervene in this**
 12 **Enforcement Proceeding.**

13 Rule 24(b) allows for permissive intervention; however, John Does 1, 2 and 3 fail here too. As
 14 they acknowledge, in order to be permitted to intervene here they must by timely motion, establish an
 15 independent ground for jurisdiction and a common question of law and fact between their claims and the
 16 main action. See *Freedom from Religion Found., Inc. v. Geithner*, 644 F.3d 836, 841 (9th Cir. 2011)⁴;
 17 Docket No. 10 at 11:26-13:3; Docket No. 19 at 10:4-15. In addition, Fed. R. Civ. P. 24(b)(3) requires
 18 that the Court “consider whether the intervention will unduly delay or prejudice the adjudication of the
 19 original parties’ rights.” Again, the United States does not dispute that John Does 1, 2 and 3 have timely

20 ⁴ Although the Ninth Circuit ultimately concluded in *Freedom from Religion Found.* that “the
 21 independent jurisdictional grounds requirement does not apply to proposed intervenors in federal-
 22 question cases when the proposed intervenor is not raising new claims,” that is not the case here. 644
 23 F.3d at 844. John Does 1, 2, and 3 are asserting a new claim against the United States– a new cause of
 24 action to quash an IRS summons– that requires that they establish an independent jurisdictional ground
 25 in order to be permitted to intervene. Further, unlike the proposed intervenor in *Freedom from Religion*
Found. who sought intervention in order to oppose a claim asserted against the government, John Does
 1, 2, and 3 are attempting to assert a claim against the government where sovereign immunity issues
 arise.

26 Because this Circuit requires that the Does establish an independent jurisdictional ground in
 27 order to proceed, the limited intervention permitted in *Sidley* is distinguishable. There, even though the
 28 district court for the Northern District of Illinois permitted intervention, it did so without addressing the
 requirement for an independent jurisdictional ground (which includes a waiver of sovereign immunity).
 See *United States v. Sidley Austin Brown & Wood LLP*, No. 03 C 9355, 2004 WL 905930, at *1 (N.D.
 Ill. Apr. 28, 2004).

1 applied to intervene in this proceeding. However, the United States has not waived its sovereign
 2 immunity for a motion to quash a John Doe summons brought by a member of the John Doe class and
 3 therefore John Does 1, 2 and 3 cannot establish the necessary subject matter jurisdiction to permit their
 4 intervention.

5 **1. John Doe 1 and John Doe 2 Have Failed to Identify Any Applicable Waiver**
 6 **of Sovereign Immunity.**

7 John Doe 1 and John Doe 2 simply assert “there is no question that this Court has subject matter
 8 jurisdiction as Movants are challenging the IRS Summons issued pursuant to this Court’s November 30,
 9 2016 Order granting the federal government’s Petition filed pursuant to 26 U.S.C. § § 7402(a), 7609(f),
 10 and 7609(h).” Docket No. 10 at 13:8-11. John Doe 3 is similarly conclusory in her inexplicable
 11 assertion that subject matter jurisdiction exists because the United States cannot assert sovereign
 12 immunity because she is seeking relief other than money damages. Docket No. 19 at 9:27-10:1.
 13 However, to establish subject matter jurisdiction in an action against the United States there must be (1)
 14 “statutory authority granting subject matter jurisdiction,” and (2) “a waiver of sovereign immunity.”
 15 *Alvarado v. Table Mountain Rancheria*, 509 F.3d 1008, 1016 (9th Cir. 2007). As a sovereign, the
 16 United States may not be sued except in strict accordance with the terms of a specific and explicit
 17 waiver of sovereign immunity granted by Congress, and the terms of the waiver define the court’s
 18 jurisdiction. *See United States v. Nordic Village, Inc.*, 503 U.S. 30, 33 (1992); *United States v. Dalm*,
 19 494 U.S. 596, 608 (1990); *United States v. Sherwood*, 312 U.S. 584, 586-587 (1941); *Gilbert v.*
 20 *DaGrossa*, 756 F.2d 1455, 1458 (9th Cir. 1985). Waivers of sovereign immunity “cannot be implied,
 21 but must be unequivocally expressed,” and are strictly construed in favor of the sovereign. *Dunn &*
 22 *Black P.S. v. U.S.*, 492 F.3d 1084, 1088 (9th Cir. 2007). Where the United States has not consented to
 23 suit, the court lacks jurisdiction over the subject matter of the action and dismissal is required. *See, e.g.,*
 24 *id.*

25 The district court’s review of a John Doe summons under Section 7609(f) prior to its issuance
 26 operates as a substitute for the review that would take place if a noticee were to file a motion to quash a
 27 summons under Section 7609(b). “In effect, in the John Doe context, the court takes the place of the
 28 affected taxpayer under §§ 7609(a) and (b) and exerts a restraining influence on the IRS.” *Tiffany Fine*

1 *Arts*, 469 U.S. at 320. Because the district court acts in this capacity in a Section 7609(f) proceeding,
 2 Congress did not see fit to duplicate that proceeding by extending the right to bring a motion to quash to
 3 a John Doe; instead, the statute authorizes such a motion to be brought only by a person who is
 4 identified in the summons. I.R.C. § 7609(a)(1), (b)(2)(A); *see also* I.R.C. § 7609(c)(3) (excluding John
 5 Doe summonses from petitions to quash). Similarly, Congress extended an automatic right of
 6 intervention in an enforcement proceeding against a summoned party only to a noticee. I.R.C. §
 7 7609(a)(1), (b)(1), (c)(3). John Does 1, 2 and 3 are not noticees under the statute.

8 In summary, “[t]he mechanism for a taxpayer’s challenge to a summons differs according to the
 9 statutory provision under which the summons is issued.” *Ritchie*, 15 F.3d at 597 (6th Cir. 1994). In the
 10 case of a John Doe summons, Congress has decided that the mechanism for challenge is the review of
 11 the district court prior to the issuance of the summons. I.R.C. § 7609(f). If this Court were to allow the
 12 Does’ intervention here, it would effectively circumvent Congress’ decision that the proper authority to
 13 review and restrict the IRS’s ability to investigate by John Doe summons is vested in the courts alone.

14 Separately, John Does 1, 2 and 3 need to establish Article III standing in order to pursue their
 15 cause of action against the government. *See Perry v. Schwarzenegger*, 630 F.3d 898, 905-06 (9th Cir.
 16 2011) (holding that when exercising its “broad discretion” to allow permissive intervention, a court may
 17 consider the proposed intervenor’s “standing to raise relevant legal issues”). This they cannot do
 18 because absent a protectable interest as previously discussed, the Does do not have a legally redressable
 19 injury. And, absent a legally redressable injury, the Court lacks jurisdiction to entertain their arguments.
 20 As the Supreme Court explained in *Vermont Agency of Natural Resources v. United States*, 529 U.S.
 21 765, 771 (2000), in order to have Article III standing to bring suit in a federal court, a party must
 22 demonstrate three things: (1) “injury in fact,” meaning “a harm that is both ‘concrete’ and ‘actual or
 23 imminent, not conjectural or hypothetical,’” (2) “causation - - a ‘fairly . . . trace[able] connection
 24 between the alleged injury in fact and the alleged conduct’”; and (3) “redressability.” “These
 25 requirements together constitute the ‘irreducible constitutional minimum’ of standing.” *Id.* The burden
 26 to prove each element of standing is on the person asserting standing. *Lujan v. Defenders of Wildlife*,
 27 504 U.S. 555, 561 (1992).

1 John Does 1, 2 and 3 do not have an injury the law will recognize if their identities and account
 2 records are given to the IRS. The law does not recognize an IRS examination as an injury, nor does it
 3 recognize having to pay additional taxes due as an injury. Since John Does 1, 2 and 3 cannot establish
 4 an injury that the law will recognize, they cannot establish Article III standing.⁵

5 **2. The intervention of John Does 1, 2 and 3 Will Unduly Delay and Prejudice**
 6 **the Adjudication of the Parties' Rights.**

7 John Doe 1 and John Doe 2 assert, without much elaboration, that because they seek to quash the
 8 summons they should be permitted to intervene, under a heading that their defenses are relevant to the
 9 validity of the Petition. Docket No. 10 at 13:12-18. In claimed support for this assertion, they cite to
 10 *United States v. Sidley Austin Brown & Wood LLP*, No. 03 C 9355, 2004 WL 816448 (N.D. Ill. April
 11 15, 2004), in which a court granted permission for a limited intervention in a John Doe summons
 12 “reasoning that ‘a dispute regarding the sufficiency of the description of the material to be produced is
 13 an appropriate basis for a challenge to a summons in an enforcement proceeding.’” Docket No. 10 at
 14 13:14-18. John Doe 1 and John Doe 2 also assert that the IRS will suffer no prejudice and there will no
 15 undue delay if they are permitted to intervene. Docket No. 10 at 13-14. *Sidley* is instructive on both of
 16 these arguments.

17 In *Sidley*, the government sought enforcement of a John Doe summons served upon Sidley
 18 Austin Brown & Wood to obtain the names of former clients of the firm. 2004 WL 816448 at *1. A
 19 group of former clients moved to intervene, arguing that their identities were protected from disclosure
 20 by the attorney-client privilege and therefore they were entitled to intervene as a matter of right. The
 21 court held that the Does did not have a right to intervene under Fed. R. Civ. P. 24(a)(2), finding that the
 22 Does identities were not privileged and therefore they did not have a protectable interest at stake in the
 23 enforcement action. 2004 WL 816448 at *8. The court did, however, permit the Does to intervene on
 24 one limited area for inquiry – the sufficiency of the description of the material to be produced—
 25 reasoning it would not be challenged by the summoned party, would not require discovery or an
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27 ⁵ The Supreme Court very recently clarified that a party intervening as a matter of right must
 28 establish it has Article III standing if the relief the litigant seeks differs from that raised by the parties in
 the action. *See Town of Chester, New York v. Laroe Estates, Inc.*, ___ S.Ct. ___, 2017 WL 2407473 (slip
 opinion) (2017). As explained above, John Does 1, 2, and 3 cannot establish Article III standing.

1 evidentiary hearing, would not require that any factual determinations be made, and it could be
2 accomplished without undue delay. 2004 WL 816448 at *10.

3 None of the same can be said for the sweeping relief sought by John Does 1, 2 and 3 if permitted
4 to intervene here. The Does have made plain their demand for an evidentiary hearing and discovery into
5 the good faith of the IRS. Docket No. 10 at 24-25; Docket No. 19 at 14-15. Although the Does title the
6 discovery they seek as “limited,” John Doe 1 and John Doe 2 identify seven topics upon which they
7 would conduct discovery and have an evidentiary hearing. The seven topics include what they charge is
8 the IRS’s failure to clarify its virtual currency guidance, the IRS’s factual showing and basis for the John
9 Doe summons,⁶ IRS resources that may be used to analyze the summoned data, IRS research programs,
10 and other unidentified IRS improper uses of power. Docket No. 10 at 24-25. For her part, John Doe 3
11 would like an opportunity to review the IRS’s use of artificial intelligence and the related “source code.”
12 Docket No. 19 at 15:1-5. Discovery into this range of topics hardly qualifies as limited, would require
13 multiple witnesses, potentially voluminous document production, and would certainly unduly delay
14 what are supposed to be summary proceedings.

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27 ⁶ The Does would not be entitled to this relief anyway because, as discussed above, they cannot
28 use this enforcement proceeding to challenge the factors under I.R.C. § 7609(f) for issuing a “John Doe”
summons or otherwise revisit this Court’s prior ruling authorizing service of the John Doe summons.

1 **IV. CONCLUSION**

2 For the foregoing reasons, the Motions to Intervene filed by John Does 1 and 2, and John Doe 3,
3 should be denied.

4 Dated this 5th day of June, 2017.

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CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that service of the foregoing has been made this 5th day of June, 2017, via the Court's ECF system to all users.

/s/ Amy Matchison
AMY MATCHISON
Trial Attorney, Tax Division
U.S. Department of Justice